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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.	
10/613,981	07/03/2003	Louis Brown Abrams	4811-14	4355	
22442 7590 06/01/2007 SHERIDAN ROSS PC		EXAMINER			
1560 BROADWAY			JUSKA, CHERYL ANN		
SUITE 1200 DENVER, CO 80202		ART UNIT	PAPER NUMBER		
			1771	····	
			MAIL DATE	DELIVERY MODE	
			06/01/2007	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

		T			
	Application No.	Applicant(s)			
Office Action Summer:	10/613,981	ABRAMS, LOUIS BROWN			
Office Action Summary	Examiner	Art Unit			
The MAN INC DATE (1)	Cheryl Juska	1771			
The MAILING DATE of this communication app Period for Reply	ears on the cover sheet with the o	correspondence address			
A SHORTENED STATUTORY PERIOD FOR REPLY WHICHEVER IS LONGER, FROM THE MAILING DA  - Extensions of time may be available under the provisions of 37 CFR 1.13 after SIX (6) MONTHS from the mailing date of this communication.  - If NO period for reply is specified above, the maximum statutory period w  - Failure to reply within the set or extended period for reply will, by statute, Any reply received by the Office later than three months after the mailing earned patent term adjustment. See 37 CFR 1.704(b).	ATE OF THIS COMMUNICATION 36(a). In no event, however, may a reply be tin rill apply and will expire SIX (6) MONTHS from cause the application to become ABANDONE	N. nely filed the mailing date of this communication. D. (35 U.S.C. 6.133)			
Status					
1)⊠ Responsive to communication(s) filed on 27 Ma	arch 2007				
	action is non-final.				
3) Since this application is in condition for allowan		esecution as to the merits is			
closed in accordance with the practice under E					
Disposition of Claims	,,,				
4)⊠ Claim(s) <u>45-81</u> is/are pending in the application.					
4a) Of the above claim(s) is/are withdrawn from consideration.					
5)⊠ Claim(s) <u>45-60,62-71 and 73-81</u> is/are allowed.					
6)⊠ Claim(s) <u>61 and 72</u> is/are rejected.					
7) Claim(s) is/are objected to.					
8) Claim(s) are subject to restriction and/or election requirement.					
Application Papers	olosion requirement.				
•	•				
9) The specification is objected to by the Examiner.					
10) The drawing(s) filed on is/are: a) acce					
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).					
Replacement drawing sheet(s) including the correction					
11)☐ The oath or declaration is objected to by the Exa	aminer. Note the attached Office	Action of form P1O-152.			
Priority under 35 U.S.C. § 119					
12) Acknowledgment is made of a claim for foreign a) All b) Some * c) None of:	priority under 35 U.S.C. § 119(a)	-(d) or (f).			
1. Certified copies of the priority documents have been received.					
2. Certified copies of the priority documents have been received in Application No					
3. Copies of the certified copies of the priori					
application from the International Bureau		in the Hadenal Glage			
* See the attached detailed Office action for a list of the certified copies not received.					
	•				
Attachment(s)		Y.			
) Notice of References Cited (PTO-892)	4) Interview Summary	(PTO-413)			
?) Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Da	ite			
	5) Notice of Informal P.	atent Application			
	o) [] Other				

### **DETAILED ACTION**

#### Continued Examination Under 37 CFR 1.114

1. A request for continued examination (RCE) under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114.

## Response to Amendment

- 2. Applicant's amendment filed with the RCE on March 27, 2007, has been entered. The specification has been amended as requested. Claims 1-44 have been cancelled and replaced with new claims 45-81.
- 3. The cancellation of claims 11 and 17 renders moot the double patenting rejection set forth in section 4 of the last Office Action (12/27/06). Additionally, the cancellation of claims 1-44 renders moot the 112, 1<sup>st</sup> rejections and prior art rejections set forth in sections 5-10 of the last Office Action.

#### **Priority**

4. It is noted that the first line of the specification has not been amended to reflect the proper priority documents as set forth in section 2 of the Office Action mailed 01/30/06.

Applicant traverses the assertion that the referenced provisional applications lack adequate

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support for the claimed elastic film and second, discontinuous adhesive layer (Amendment, page 9, 1<sup>st</sup> – 4<sup>th</sup> paragraph). Specifically, applicant cites several passages from US Provisional Application 60/403,992, filed August 16, 2002. This argument is unpersuasive since priority was granted to provisional applications 60/403,992 and 60/405473, but not the other three cited provisional applications 60/393,362, 60/416,098, and 60/443,986. From section 2 of the Office Action mailed 01/30/06 (emphasis added):

Applicant's claim for the benefit of a prior-filed application under 35 U.S.C. 119(e) or under 35 U.S.C. 120, 121, or 365(c) is acknowledged. Applicant has not complied with one or more conditions for receiving the benefit of an earlier filing date under 35 U.S.C. [1] as follows:

The later-filed application must be an application for a patent for an invention which is also disclosed in the prior application (the parent or original nonprovisional application or provisional application). The disclosure of the invention in the parent application and in the later-filed application must be sufficient to comply with the requirements of the first paragraph of 35 U.S.C. 112. See *Transco Products, Inc. v. Performance Contracting, Inc.*, 38 F.3d 551, 32 USPQ2d 1077 (Fed. Cir. 1994).

The disclosures of the prior-filed applications, Application Nos. 60/393,362, 60/416,098, and 60/443,986, fail to provide adequate support or enablement in the manner provided by the first paragraph of 35 U.S.C. 112 for one or more claims of this application. Specifically, said prior-filed applications fail to provide support for the claimed elastic film and second, discontinuously distributed, adhesive layer.

## Claim Rejections - 35 USC § 112

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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- 6. Claims 61 and 72 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
- 7. Claim 61 is indefinite for the use of the phrase "a not melt polyester web adhesive." The scope of said claim is unclear.
- 8. Claim 72 recites the limitation "the elastic film" in sections (i), (ii), and (iii) of the claim. There is insufficient antecedent basis for this limitation in the claim. Note the claim positively recites an elastic *layer* rather than an elastic *film*.

## Allowable Subject Matter

- 9. Claims 45-60, 62-71, and 73-81 are allowed. The prior art fails to teach or suggest a flocked article comprising a combination of a thermoset flock adhesive and an elastic film (substrate)
- 10. Claims 61 and 72 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

#### Conclusion

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cheryl Juska whose telephone number is 571-272-1477. The examiner can normally be reached on Monday-Friday 10am-6pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached

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at 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

12. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <a href="http://pair-direct.uspto.gov">http://pair-direct.uspto.gov</a>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

